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SYMYX TECHNOLOGIES INC
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OFFICE OF PETITIONS

In re Application of	:
Boussie et al.	:
Application No. 09/854,128	: DECISION DISMISSING
Filed: 10 May, 2001	: PETITION
Attorney Docket No. 99-111CIP1	:

This is a decision in reference to the petition filed on 28 February, 2002 (certificate of mailing date 13 February, 2002), under 37 CFR 1.53(b), requesting that the above identified application be accorded a filing date of 10 May, 2001, with two (2) sheets of drawings as a part of the original disclosure.

The petition is dismissed.

The application was deposited on 10 May, 2001, without drawings. On 1 February, 2002, Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application, stating that the application had been deposited without drawings, and that the filing date would be the date the drawings were received. A two (2)-month period for reply was set.

In response, on 28 February, 2002 (certificate of mailing date 13 February, 2002), petitioner filed the present petition accompanied by two (2) sheets of drawings. Petitioners assert that the application, including two (2) sheets of drawings, is entitled to a filing date of 10 May, 2001, because the application claims the benefit of prior Application No. 09/567,598, filed on 10 May, 2000, which contains the two (2) drawing figures contained in the two (2) sheets of drawings filed with the present petition.

Petitioners' argument has been considered, but is not persuasive. Whether the drawings were a part of a copending application is not an issue here since the copending application was not specifically incorporated by reference into the disclosure of this application.¹ The mere reference to another application is not an incorporation of anything therein into the application containing the reference.² To allow one to retroactively incorporate by reference a second application into a first application would allow the addition of matter into an application that was not present on filing which would be contrary to our statutes and rules. Still further, the question of new matter is not an issue here. The two (2) sheets of drawings were simply not filed in the present application in the USPTO on 10 May, 2001.

A review of the record reveals that Claims 1-24, however, are method claims. It has been PTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).³ Therefore, the present application is deemed to be an application which does not require a drawing for an understanding of the invention. Accordingly, the application, as filed, is entitled to a filing date without the drawings.

The application will be processed and examined using only the application papers filed on 10 May, 2001. The two (2) sheets of drawings supplied with the present petition will not be used for processing or examination, but will be retained in the application file.

The Notice mailed on 1 February, 2002, is hereby vacated. The petition fee of \$130.00 will be refunded to counsel's deposit account, No. 50-0496.

Receipt of the preliminary amendment filed on 28 February, 2002, is acknowledged.

¹See MPEP 608.01(p).

²See In re de Seversky, 177 USPQ 144, 146 (C.C.P.A. 1973); Dart Industries v. Banner, 207 USPQ 273, 276 (D.C. Cir. 1980).

³MPEP 601.01(f).

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 10 May, 2001, using the application papers filed on that date, and for an indication on the bib-data sheet that zero (0) sheets of drawings were present on filing.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Douglas I. Wood at (703) 308-6918.



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